

NEW MEXICO JUDICIAL BRANCH

GENERAL POLICY AND PROCEDURE

Reference NMJBPR & NMJBPRawe Section 1.05

HARASSMENT (INCLUDING SEXUAL HARASSMENT)

DISCRIMINATION AND RETALIATION POLICY

1. PURPOSE

The purpose of this policy is to protect all employees from harassment (including sexual harassment), discrimination and retaliation and to establish procedures employees must follow if aware of or subject to harassment, discrimination or retaliation.

The New Mexico Judicial Branch is committed to creating and maintaining a work environment in which employees can work together in an atmosphere that enhances productivity, recognizes employee diversity and is free from all forms of harassment, discrimination and retaliation.

Harassment, discrimination because of race, religion, sex, age, national origin, ancestry, disability or medical condition, sexual orientation, socioeconomic status or political affiliation, as well as retaliation against employees who file a complaint, is illegal and will not be tolerated by the New Mexico Judicial Branch.

This policy has a broad application and applies to justices, judges, all employees (probationary, term, classified, at-will and temporary employees), in addition to outside parties.

Any employee who violates this policy will be subject to discipline up to and including termination. Any justice or judge who violates this policy shall be subject to referral to the Judicial Standards Commission, and discipline by the Supreme Court, as appropriate.

2. DEFINITIONS

- A. AOC Human Resources (HR) Director** - The individual who manages the staff of the Administrative Office of the Courts' Human Resources Division and who has ultimate responsibility for human resources functions throughout the Judicial Branch.
- B. Business Day** - 8:00 a.m. to 5:00 p.m. local time. Monday through Friday, except holidays.

Harassment (Including Sexual), Discrimination and Retaliation Policy & Notice Form

Inquiries: Administrative Office of the Courts, Human Resources Division 827-4937 or 827-4810

Distribution: All employees of the New Mexico Judicial Branch

Retain Until Superseded

- C. **Director** - The Director of the Administrative Office of the Courts.
- D. **Discrimination** - When an employee is treated differently or not considered in the recruitment, hiring and promotion process, and other terms and conditions of employment because of race, religion, sex, age, national origin, ancestry, disability or medical condition, sexual orientation, socioeconomic status or political affiliation.
- E. **Harassment** - The act of annoying or making repeated attacks, as in badgering, tormenting, bothering, hounding, persecuting, hassling, pestering, joking, gesturing, commenting or conversing which is offensive in nature.
- F. **Lost Compensation** - Compensation accrued, gained or accumulated indicating a right to such compensation.
- G. **Outside Party** - An individual who is not a justice, judge or employee of any judicial entity.
- H. **Retaliation** - The act of attacking in return, as in taking revenge, reciprocating, settling a score or getting even.
- I. **Sexual Harassment** - Behavior of a sexual nature that is unwelcome and personally offensive to its recipient; requests for sexual favors; other verbal or physical conduct of a sexual nature that are unwelcome. Such behavior may come from Judicial Branch employees as well as from outside parties. Examples of sexual harassment which shall not be tolerated include but are not limited to: suggestive or obscene e-mails, letters, notes, invitations; derogatory comments, epithets, lewd language, slurs or jokes; impeding or blocking movements; touching or any physical interference with normal work; sexually oriented gestures; the display of sexually suggestive or derogatory objects, pictures, cartoons, or posters; threats or insinuations that lack of sexual favors will result in reprisals; withholding support for reappointment, promotions or transfers, change of assignments.
- J. **Witness** - Any individual who has direct or indirect knowledge of the incident(s) relevant to an investigation.

Harassment (Including Sexual), Discrimination and Retaliation Policy & Notice Form

Inquiries: Administrative Office of the Courts, Human Resources Division

827-4937 or 827-4810

Distribution: All employees of the New Mexico Judicial Branch

Retain Until Superseded

3. EDUCATIONAL PROGRAMS

- A.** Each judicial entity shall ensure every employee attends an AOC-approved Harassment, Discrimination and Retaliation Training course within six (6) months of hire.
- B.** The Administrative Authority or designee shall certify to the Director by the first of January each year that all current employees of that judicial entity have previously received training or will receive the above training within the next six (6) months.
- C.** Follow-up Harassment Discrimination and Retaliation Training may be provided, as appropriate.
- D.** Each employee who attends Harassment, Discrimination and Retaliation Training shall sign a verification that the employee has attended the training.
- E.** The Harassment, Discrimination and Retaliation Training shall include:
 - (1)** an overview of the New Mexico Judicial Branch Personnel Rules (NMJBPR) and New Mexico Judicial Branch Personnel Rules for At-Will Employees (NMJBPR AWE) Section 1.05;
 - (2)** what constitutes harassment, discrimination and retaliation;
 - (3)** examples of harassment, discrimination and retaliation;
 - (4)** examples of how to handle a harassing, discriminatory or retaliatory situation;
 - (5)** steps to take for resolution if an employee feels harassment, discrimination or retaliation has occurred.

4. EMPLOYEE PROVISIONS

- A.** Each manager and supervisor shall establish and maintain a work environment that is free of harassment, discrimination and retaliation from justices, judges, employees and outside parties.

- B. Each employee of the Judicial Branch is expected to abide by this policy and shall avoid any behavior or conduct toward any justice, judge, employee or outside party that could be interpreted as harassment, discrimination or retaliation.
- C. An employee who observes or becomes aware of any possible harassment, discrimination or retaliation shall immediately report it.
- D. An employee shall not be subject to retaliation for making a complaint under this policy.
- E. An employee who violates this policy shall be subject to discipline up to and including termination in accordance with the provisions of the NMJBPR.

5. JUSTICE AND JUDGE PROVISIONS

- A. Each justice and judge shall establish and maintain a work environment that is free of harassment, discrimination and retaliation from justices, judges, employees and outside parties.
- B. A justice or judge of the Judicial Branch is expected to abide by this policy and shall avoid any behavior or conduct toward any justice, judge, employee or outside party that could be interpreted as harassment, discrimination or retaliation.
- C. A justice or judge who observes or becomes aware of any possible harassment, discrimination or retaliation shall immediately report it.
- D. Any justice or judge who violates this policy shall be subject to referral to the Judicial Standards Commission, and discipline by the Supreme court, as appropriate.
- E. If a complaint against a justice or judge is referred to the Judicial Standards Commission, the provisions of NMSA §34-10-2.1 shall apply.

6. HOW TO REPORT HARASSMENT, DISCRIMINATION AND RETALIATION

- A. A Justice, Judge or n employee should submit a written or oral complaint within a reasonable time not to exceed 90 calendar days of the alleged behavior.

Harassment (Including Sexual), Discrimination and Retaliation Policy & Notice Form

Inquiries: Administrative Office of the Courts, Human Resources Division

827-4937 or 827-4810

Distribution: All employees of the New Mexico Judicial Branch

Retain Until Superseded

- (1) Whether or not the accused individual is confronted directly about the individual's behavior, the complaining individual shall immediately report the behavior. An individual who believes that they have been a victim of harassment, discrimination or retaliation is encouraged to inform the accused individual that the behavior is offensive and that it should stop immediately.
 - (2) An individual may use the "Harassment (Including Sexual), Discrimination and Retaliation Notice Form" to make a written complaint or report.
- B.** Any employee knowingly making false statements in a complaint or during an investigation of harassment, discrimination or retaliation, shall be subject to discipline, pursuant to the NMJBPR.

7. INVESTIGATION PROCEDURES

- A.** The responsibility to investigate harassment, discrimination and retaliation complaints is vested in the AOC HR Director or designee, who shall initiate an investigation within 20 business days of receipt of a complaint. If the AOC HR Director is the individual alleged as harassing, discriminating or retaliating against the individual, the individual should submit a complaint to the Director who shall conduct the confidential investigation.
- B.** All interviews and discussions with parties associated with the complaint and witnesses shall be conducted in private.
- C.** The investigator shall inform each interviewee to keep the matter confidential.
- D.** Upon receipt of a harassment, discrimination or retaliation complaint, the AOC HR Director or designee will inform the accused individual's supervisor of the complaint within five (5) business days.

(1) Interview the Complainant

The interview shall be documented in statement form. The allegation shall be discussed in detail to determine:

- a.** the identity of the accused individual (hereafter, the "respondent");

Harassment (Including Sexual), Discrimination and Retaliation Policy & Notice Form

Inquiries: Administrative Office of the Courts, Human Resources Division

827-4937 or 827-4810

Distribution: All employees of the New Mexico Judicial Branch

Retain Until Superseded

- b. the specific details of each event the complainant believes is inappropriate, including date(s), time(s), location(s), act(s), gesture(s) and dialogue;
- c. whether there are any documents to support the allegations of the complainant;
- d. to the extent possible, any economic and/or psychological consequences to the complainant;
- e. the nature and past history of the relationship between the complainant and respondent and the relationship of the respondent to the organization (i.e., supervisory employee, non-supervisory employee, third party, elected official);
- f. any statement(s), act(s) or gesture(s) the complainant has made to let the respondent know the behavior is unwelcome. If the complainant initially welcomed the conduct by active participation, the complainant should have given specific notice to the respondent that the conduct was no longer welcome for any such subsequent conduct to be deemed unwelcome;
- g. whether the complainant knows of others who may have been party to the alleged behavior by the respondent;
- h. the names of any witnesses to the alleged behavior, and/or the names of individuals who were told of the alleged behavior;
- i. whether management could have become or was aware of the incident(s) that are the subject of the complaint; and
- j. whether the complainant has made a previous complaint concerning the alleged behavior and to whom such complaint was made.

- (2) If the complainant is unwilling to be interviewed, to sign the formal complaint statement or to otherwise participate or cooperate in the investigative process, the investigator shall prepare and sign a written statement attesting to the refusal of the complainant to cooperate in the investigation. An investigation of the allegation shall nevertheless be conducted in a manner appropriate to the circumstances.

(3) Interview the Respondent

The respondent should receive an explanation and be afforded the opportunity to discuss the allegation(s) in detail. The interview shall be documented in statement form. The investigator must:

Harassment (Including Sexual), Discrimination and Retaliation Policy & Notice Form

Inquiries: Administrative Office of the Courts, Human Resources Division

827-4937 or 827-4810

Distribution: All employees of the New Mexico Judicial Branch

Retain Until Superseded

- a. inform the respondent of the nature of the inquiry;
- b. request that the respondent reply to each of the allegations made;
- c. ask for the name(s) of witnesses, if any, who can confirm the respondent's statement;
- d. obtain copies of any documentation supporting the respondent's statement;
- e. ask if the respondent has previously had any kind of conflict with the complainant;
- f. determine the nature and past history of the relationship between the complainant and the respondent. Assess if the complainant initially welcomed the conduct by active participation and if the complainant gave specific notice to the respondent that the conduct was no longer welcome; and
- g. inform the respondent that any retaliation against the complainant is unlawful and, in the case of an employee, will result in discipline up to and including termination.

- (4) If the respondent is unwilling to be interviewed, or to otherwise participate or cooperate in the investigative process, the investigator shall prepare and sign a written statement attesting to the refusal of the respondent to participate in the investigation. An investigation of the allegation shall nevertheless be conducted in a manner appropriate to the circumstances.

(5) Interview Complainant's and Respondent's Witnesses

If there are witnesses to the alleged behavior or to other matters discussed in the separate interview with the complainant and respondent, the witnesses must be interviewed to confirm or refute any of the allegations. Interviews of witnesses shall be documented in statement form, signed by the witness and become part of the evidence of the investigation. Because harassment, discrimination and retaliation often occur in private, there may not be any witnesses to the alleged behavior. Evidence may be obtained from individuals who observed either party's demeanor immediately after the alleged behavior or an individual with whom the complainant or respondent discussed the incident. If a witness is unwilling to be interviewed, or to otherwise participate or cooperate in the investigative process, the investigator shall prepare and sign a written statement attesting to the refusal of the witness to participate in the investigative process. Any factual information provided by the witness(s)

Harassment (Including Sexual), Discrimination and Retaliation Policy & Notice Form

Inquiries: Administrative Office of the Courts, Human Resources Division

827-4937 or 827-4810

Distribution: All employees of the New Mexico Judicial Branch

Retain Until Superseded

shall nevertheless be documented and evaluated as part of the entire record of the investigation.

Harassment (Including Sexual), Discrimination and Retaliation Policy & Notice Form

Inquiries: Administrative Office of the Courts, Human Resources Division

827-4937 or 827-4810

Distribution: All employees of the New Mexico Judicial Branch

Retain Until Superseded

8. FINDINGS OF FACT AND RESPONSE

- A. Upon completing the investigation, the AOC HR Director or designee, shall:
 - (1) evaluate the complainant's and respondent's accounts of the events for internal consistency and plausibility;
 - (2) evaluate all other facts, documents and statements gathered during the investigation;
 - (3) prepare findings of fact; and
 - (4) inform the complainant and respondent of the results of the investigation in writing.
 - (5) inform the respondent's supervisor of the results of the investigation and of any action(s) recommended.

- B. The AOC HR Director or designee shall prepare a thorough report documenting all information gathered regarding the alleged behavior, and recommend appropriate disciplinary action to the Administrative Authority or appropriate administrative party. A confidential file containing all documentation shall be maintained by the AOC HR Director or designee.

9. GRIEVANCE RIGHTS

A. At-Will Employee

An at-will employee who is disciplined under this policy has no grievance rights under NMJBPRWE.

B. An Employee Who Has Completed Probationary Period

An employee who has completed the probationary period who is suspended, demoted, terminated or suffers a loss of accrued compensation under this policy may file a grievance in accordance with the NMJBPR.

11. CONFIDENTIALITY

Harassment (Including Sexual), Discrimination and Retaliation Policy & Notice Form

Inquiries: Administrative Office of the Courts, Human Resources Division

827-4937 or 827-4810

Distribution: All employees of the New Mexico Judicial Branch

Retain Until Superseded

Confidentiality shall be maintained by all individuals involved in any capacity throughout the investigative process.

11. OUTSIDE-PARTY HARASSMENT

- A. Upon receipt of a harassment, discrimination or retaliation complaint against an outside party, the AOC HR Director or designee shall initiate an investigation by interviewing the complainant and complainant's witnesses in the manner stated above. If appropriate, interviews will be held with the respondent and the respondent's witnesses in the manner stated above.
- B. In reviewing and responding to such a case, the AOC HR Director or designee, shall consider the extent of Judicial Branch control and any other legal responsibility the Judicial Branch has with respect to the conduct of outside parties, and recommended action to the Administrative Authority or appropriate administrative party.

12. SUPPLEMENTAL REVIEW

- A. If the complaint and harassment, discrimination or retaliation was substantiated, the AOC HR Director or designee shall contact the complainant within 90 business days of the investigation to ensure that the behavior has stopped and that there has been no reprisal or retaliation for reporting or filing a complaint.
- B. If an employee alleges further harassment, discrimination or retaliation, it shall be investigated in the manner stated above.

Effective Date:

Dev: Draft 10/07/05
Revised 3 16 06 (After meeting with Gina.)

Harassment (Including Sexual), Discrimination and Retaliation Policy & Notice Form

Inquiries: Administrative Office of the Courts, Human Resources Division

827-4937 or 827-4810

Distribution: All employees of the New Mexico Judicial Branch

Retain Until Superseded

**HARASSMENT (INCLUDING SEXUAL),
DISCRIMINATION AND RETALIATION NOTICE**
Reference NMJBPR & NMJBPAWE Section 1.05

Confidentiality shall be maintained throughout the investigative process.

Name: _____ Date: _____

Judicial Entity: _____ Telephone Number: _____

Please answer the following questions with as much information as possible.

Name the accused individual(s):

State the date, time and location the event occurred:

Give the specific details of each event that leads you to believe that you have been harassed, discriminated or retaliated against or that you have observed harassment or discrimination:

Harassment (Including Sexual), Discrimination and Retaliation Policy & Notice Form

Inquiries: Administrative Office of the Courts, Human Resources Division

827-4937 or 827-4810

Distribution: All employees of the New Mexico Judicial Branch

Retain Until Superseded

Describe the act(s), gesture(s) and dialogue that occurred:

Were there any witnesses to the event? If so, name them:

What is the nature and past history of your relationship to the accused individual (employee/supervisor)?

Do you have documents to support your allegations? If so, please attach copies.

Harassment (Including Sexual), Discrimination and Retaliation Policy & Notice Form

Inquiries: Administrative Office of the Courts, Human Resources Division

827-4937 or 827-4810

Distribution: All employees of the New Mexico Judicial Branch

Retain Until Superseded

Describe any statements, act(s) or gesture(s) you made to let the accused individual know the behavior is unwelcome:

Have there been any economic and/or psychological consequences to you? If so, state what they are:

Do you know of others who may have suffered harassment, discrimination or retaliation by the accused? If so, name the individuals and describe the alleged conduct:

Could management be aware of the event about which you are complaining? If so, how?

Harassment (Including Sexual), Discrimination and Retaliation Policy & Notice Form

Inquiries: Administrative Office of the Courts, Human Resources Division

827-4937 or 827-4810

Distribution: All employees of the New Mexico Judicial Branch

Retain Until Superseded

Have you complained previously of the alleged behavior? If so, to whom and when?

Provide any other details or information that you feel might be pertinent:

I attest that the information provided above is true and accurate to the best of my knowledge.

Signature of complainant _____

Received by: _____ Date: _____

Any employee knowingly making false statements in a complaint or during an investigation of harassment, discrimination or retaliation, shall be subject to discipline, pursuant to NMJBPR.

Harassment (Including Sexual), Discrimination and Retaliation Policy & Notice Form

Inquiries: Administrative Office of the Courts, Human Resources Division

827-4937 or 827-4810

Distribution: All employees of the New Mexico Judicial Branch

Retain Until Superseded

**HOW TO REPORT HARASSMENT
(INCLUDING SEXUAL HARASSMENT),
DISCRIMINATION & RETALIATION**

Complainant

TO

Judicial Entity HR Director or AOC HR Director

or

*Immediate Supervisor, any Judicial Manager
or Supervisor, Chief Clerk, Administrative Authority, Chief Judge

TO

*If a verbal or written complaint is received by any of these individuals, they must immediately follow through with notification to either the judicial entity HR Director, or the AOC HR Director.

If you have any questions, please contact the AOC HR Director at 827-4937

Harassment (Including Sexual), Discrimination and Retaliation Policy & Notice Form

Inquiries: Administrative Office of the Courts, Human Resources Division

827-4937 or 827-4810

Distribution: All employees of the New Mexico Judicial Branch

Retain Until Superseded